

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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NEVADA INTEGRATED BEHAVIORAL
SERVICES, INC.,

Plaintiff(s),

v.

WELLS FARGO BANK, N.A.,

Defendant(s).

Case No. 2:21-CV-1619 JCM (NJK)

ORDER

Presently before the court is defendant Wells Fargo Bank (“Wells Fargo”)’s motion for summary judgment. (ECF No. 16). Plaintiff Nevada Integrated Behavioral Services, Inc. (“NIBS”) filed a response (ECF No. 20), to which Wells Fargo replied (ECF No. 21).

I. Background

NIBS brings a single claim for conversion against Wells Fargo. (ECF No. 1-1). NIBS seeks to hold Wells Fargo responsible for hundreds of allegedly unauthorized transactions from NIBS’s business deposit account. (*See id.*).

There is no genuine dispute as to the following material facts. NIBS has maintained a business checking account with Wells Fargo since February 12, 2015. Beginning at some point in 2017, until February 2020, hundreds of allegedly unauthorized electronic disbursements were made from NIBS’s account.¹ NIBS’s primary principal noticed the missing funds, and subsequently lodged a complaint with Wells Fargo on April 16, 2020. (ECF No. 19-5). Wells Fargo denied a substantial portion of NIBS’s claim because too much time had passed before Wells

¹ The disbursements relate to monthly bills paid for an individual named Christopher Green. NIBS also contends that some transactions relate to another individual with a name similar to the owner of NIBS.

1 Fargo was notified. (*Id.*). Pursuant to the account agreements, NIBS was required to notify Wells
 2 Fargo of any errors or unauthorized transactions within 30 days after each monthly statement was
 3 made available.² (ECF Nos. 17-1, 17-2). Wells Fargo now moves for summary judgment on
 4 NIBS's sole claim for conversion. (*Id.*).

5 **II. Legal Standard**

6 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
 7 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
 8 show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment
 9 as a matter of law." Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is "to isolate
 10 and dispose of factually unsupported claims" *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–
 11 24 (1986).

12 For purposes of summary judgment, disputed factual issues should be construed in favor
 13 of the non-moving party. *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be
 14 entitled to a denial of summary judgment, the non-moving party must "set forth specific facts
 15 showing that there is a genuine issue for trial." *Id.*

16 In determining summary judgment, the court applies a burden-shifting analysis. "When
 17 the party moving for summary judgment would bear the burden of proof at trial, it must come
 18 forward with evidence which would entitle it to a directed verdict if the evidence went
 19 uncontroverted at trial." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480
 20 (9th Cir. 2000). Moreover, "[i]n such a case, the moving party has the initial burden of establishing
 21 the absence of a genuine issue of fact on each issue material to its case." *Id.*

22 By contrast, when the non-moving party bears the burden of proving the claim or defense,
 23 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
 24 element of the non-moving party's case; or (2) by demonstrating that the non-moving party failed
 25 to make a showing sufficient to establish an element essential to that party's case on which that
 26 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving

27
 28 ² "[NIBS is] obligated to...[n]otify [Wells Fargo] within 30 days after [Wells Fargo] ha[s]
 made [NIBS's] account statement available to [NIBS] of any unauthorized transaction on [NIBS's]
 account." (ECF Nos. 17-1, 17-2).

1 party fails to meet its initial burden, summary judgment must be denied and the court need not
2 consider the non-moving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
3 60 (1970).

4 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
5 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
6 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
7 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
8 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
9 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,
10 630 (9th Cir. 1987).

11 In other words, the nonmoving party cannot avoid summary judgment by relying solely on
12 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,
13 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
14 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
15 for trial. *See Celotex*, 477 U.S. at 324.

16 At summary judgment, a court’s function is not to weigh the evidence and determine the
17 truth, but to determine whether a genuine dispute exists for trial. *See Anderson v. Liberty Lobby,*
18 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all
19 justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the
20 nonmoving party is merely colorable or is not significantly probative, summary judgment may be
21 granted. *See id.* at 249–50.

22 The Ninth Circuit has held that information contained in an inadmissible form may still be
23 considered for summary judgment if the information itself would be admissible at trial. *Fraser v.*
24 *Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003) (citing *Block v. City of Los Angeles*, 253 F.3d 410,
25 418-19 (9th Cir. 2001) (“To survive summary judgment, a party does not necessarily have to
26 produce evidence in a form that would be admissible at trial, as long as the party satisfies the
27 requirements of Federal Rules of Civil Procedure 56.”)).

28 . . .

1 **III. Discussion**

2 Wells Fargo moves for summary judgment, arguing that NIBS's claim for conversion is
3 unsupported by evidence, legally insufficient, and untimely. (*See* ECF No. 16).

4 As an initial matter, NIBS contends that the exhibits supplemented by Wells Fargo should
5 not be considered because they are not properly authenticated. (ECF No. 20 at 4). However,
6 proper authentication of evidence is not necessary at this stage of the proceedings. *See Fraser v.*
7 *Goodale*, 342 F.3d at 1036. Thus, the court may consider the exhibits. NIBS also argues that
8 summary judgment is premature because Wells Fargo has failed to participate in discovery. (ECF
9 No. 20 at 5). The court is not persuaded; Wells Fargo has provided NIBS with the required Rule
10 26 disclosures and ample responses to written discovery.

11 A. NIBS's Claim for Conversion Fails as a Matter of Law

12 Nevada's version of the Uniform Commercial Code ("UCC") is codified in NRS Chapters
13 104 and 104A. *See* NRS 104.1101 *et seq.* Article 4 governs liability of a bank for events related
14 to payments handled by the bank. *See* NRS 104.4102. Specifically, "NRS 104.4406 regulates the
15 relationship between a bank and its customers concerning losses sustained due
16 to unauthorized activity in the customer's bank account." *C. Nicholas Pereos, Ltd. v. Bank of Am.,*
17 *N.A.*, 352 P.3d 1133, 1135 (Nev. 2015).

18 The statute, like the account agreements, absolves a bank of liability for an unauthorized
19 transaction when (1) it provides the customer with information sufficient to identify any
20 unauthorized transactions, and (2) the customer subsequently fails to timely act in response. *See*
21 *C. Nicholas Pereos, Ltd.*, 352 P.3d at 1135; NRS 104.4406. Once the necessary account
22 information is provided, the customer must "exercise reasonable promptness" in examining the
23 information and notifying the bank of any unauthorized transactions. *C. Nicholas Pereos, Ltd.*,
24 352 P.3d at 1135; NRS 104.4406(3).

25 Here, Wells Fargo provided NIBS with account statements every month exhibiting the
26 disputed transactions that were sufficient for NIBS to identify the alleged unauthorized
27 transactions. (*See* ECF Nos. 17-3, 18-1, 18-2). NIBS had a duty to review the monthly statements
28 and promptly notify Wells Fargo of any unauthorized transactions after each monthly statement

1 was made available to it. *See* NRS 104.4406. It is immaterial that NIBS's owner was "in and out
 2 of the country, running several prosperous businesses." (*See* ECF No. 20). Indeed, NIBS does
 3 not dispute its failure to review the relevant monthly statements and promptly notify Wells Fargo
 4 of any unauthorized transactions. (*See id.*).

5 The disputed transactions began sometime in 2017, until February 2020. (ECF No. 1).
 6 NIBS lodged its first dispute to Wells Fargo on April 16, 2020.³ (*See* ECF No. 19-5). The court
 7 finds that NIBS failed to exercise the requisite promptness in examining its monthly statements
 8 and notifying Wells Fargo of any unauthorized transactions as they relate to the \$141,298.17 in
 9 charges. *See* NRS 104.4406; (ECF Nos. 17-1, 17-2). Thus, there remains no genuine issue of
 10 material fact, and summary judgment is appropriate.

11 **IV. Conclusion**

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Wells Fargo's motion for
 14 summary judgment (ECF No. 16) be, and the same hereby is, GRANTED.

15 The clerk of the court is instructed to enter judgment in favor of Wells Fargo and close this
 16 case.

17 DATED April 6, 2023.

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 UNITED STATES DISTRICT JUDGE

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³ Wells Fargo did not deny all NIBS's claims. Rather, it only denied NIBS's claims as they related to charges that were untimely raised from the date of the initial dispute—April 16, 2020.